

Appl. No. 10/750,381  
Amdt. dated November 9, 2006  
Reply to Office Action of August 9, 2006

#### **Remarks**

Claims 1-42 are pending. Claims 3, 5-12, 19-30, 33-35, and 38-41 are withdrawn. Claims 1, 4, 13, 14, 17, 18, 31, 32, and 36 have been amended.

#### **Elections /Restrictions**

Applicants acknowledge that claims 3, 5-12, 19-30, 33-35, and 38-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

#### **Claim Objections**

The status identifiers for claims 1, 2, 4, 13-18, 37 and 42 have been corrected to properly reflect the status of the claims resulting from the restriction requirements.

#### **Claim Rejections – 35 USC 102(e)**

Claims 31 and 42 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Mortell et al. (U.S. 2004/0107481) (hereinafter "Mortell"). Applicants respectfully traverse the rejection.

With respect to Claim 31, the Office believes Mortell discloses a garment shell 64 including a front panel 22 defining a front waist region 38, a back panel 24 defining a back waist region 39 and an inner absorbent assembly; where the front waist region and back waist region are connected via seams to define a waist opening and at least one leg opening, and the garment shell 64 has waist elastic member 58 (elasticized shell waistband) adapted to encircle the wearer and said shell defines a body-side surface and an outward surface. The Office believes the inner absorbent assembly comprises an absorbent composite 60 defining a front region and a back region. The Office further believes Mortell teaches that the absorbent structure 60 can be in various forms, e.g. in the form of a training pant, thus teaching an elastic support waistband defining a front section and a back waist section. Moreover, the Office believes the absorbent structure front end (and thus the elasticized support waistband) is attached (i.e. connected) to the garment shell at front waist edge 38 of front region 22 and the structure's back end is attached back waist edge 39 by any suitable means known in the art, e.g. at least one posterior support strap that would connect composite 60 to back waist edge 39 as taught by Mortell.

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With respect to claim 42, the Office believes Mortell teaches a crotch region 26 interconnecting the front back panel 22 and back panel 24 to define two leg openings.

In order to be anticipatory, a reference must explicitly or implicitly disclose each and every element of the claimed invention. Mortell relates to absorbent articles constructed from a garment shell and an absorbent structure 60. Figures 1-2B illustrate a full-length absorbent structure that attaches between the front and back waist band of the garment shell. In the alternative, absorbent structure 60 could be a pad-type absorbent that can be attached in the crotch region 26 of pant 10; examples of a pad-type absorbent composite is DEPEND Guards for Men, and KOTEX Absorbent Pads. See, Mortell, paragraph 0079. Such pads as known in the art typically do not extend between the front and rear waist band of the garment with which they are worn.

Independent Claim 31 of the present invention as amended is directed to an absorbent composite that terminates in the crotch region, yet does not attach to the crotch region of the garment shell. Instead, the absorbent composite is attached to the at least one posterior support strap. In contrast, DEPEND Guards for Men and KOTEX Absorbent Pads are attached to the crotch region of a pair of underwear or pants-like garments. Support for the amendment to claim 31 may be found at paragraphs 47 and 64 of the present application.

Mortell does not disclose (either explicitly or implicitly) each and every element of the claimed invention. For example, Mortell does not disclose a pad that terminates in the crotch region, while remaining free of attachment to the crotch region of the garment shell. Therefore, the Mortell reference does not disclose an element of claim 31. For at least this reason, Applicant respectfully submits that independent Claim 31 is patentable over Mortell. For the same reason, Applicant respectfully submits that claim 42, which is dependent on claim 31, is also patentable over Mortell. Based on the foregoing, Applicant respectfully requests that the rejection under 35 U.S.C. §102(e) be withdrawn.

#### **Rejection of Claim 31 Under 35 U.S.C. § 103(a)**

The Office rejects claim 31 under 35 U.S.C. § 103(a) as being unpatentable under Mortell. Applicants respectfully traverse the rejection. Applicants respectfully submit that the rejection is improper in view of MPEP 706.02(I)(1), which references 35 U.S.C. 103(c)(1):

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Subject matter developed by another person, which qualifies as prior art only under one or more of subsection (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Applicant hereby states that the present application and the Mortell reference were, at the time the invention was made, owned by, or subject to an obligation of assignment. Thus, Applicant respectfully submits that the rejection under 35 U.S.C. 103(a) under the Mortell reference should be withdrawn. Applicant is not responding at this time to the substantive portion of the Examiner's rejection. It is noted that the rejection appears to be incomplete as there is no mention of the Scovel reference, yet there is an admission that Mortell does not teach certain elements of claim 31.

**Rejection of Claims 1, 2, 4, 13-18, 36, 37, and 32<sup>1</sup> Under 35 U.S.C. §103 (a)**

The Office rejects Claims 1, 2, 4, 13-18, 36, 37, and 32 under 35 U.S.C. § 103(a) as being unpatentable over the Mortell in view of U.S. Patent Publication 2002/0177825 to Scovel (hereinafter "Scovel"). Applicant respectfully traverses the rejection.

The Office acknowledges that the Mortell reference fails to explicitly teach at least one posterior strap connecting the elastic support waistband to the support structure, as they are unitary. However, the Office believes that Scovel teaches a disposable incontinence device comprising a disposable urinary bag having absorbent material 34 therein that is held in place to absorb excreted urine, where the bag is fully capable of being worn inside a garment shell. The Office states that the bag is held in place by least one posterior leg strap 16 that connects said bag (absorbent composite) to an elastic support waistband 14. This strap configuration holds the bag (absorbent composite) in place, preventing sliding or chafing. The Office believes it would be obvious to one of ordinary skill in the art to provide at

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<sup>1</sup> Applicants note that page 4 of the present Office Action appears to have a typographical error. The phrase "Claims 1, 2, 4, 13-18, 36, 37 and 42" appears that it should read instead, "Claims 1, 2, 4, 13-18, 36, 37 and 32." (Emphasis added.) The reasoning behind this conclusion is that page 5 includes the rejection statement for claims 4 and 32, which have nearly identical limitations. There is no rejection statement under section 103 for claim 42.

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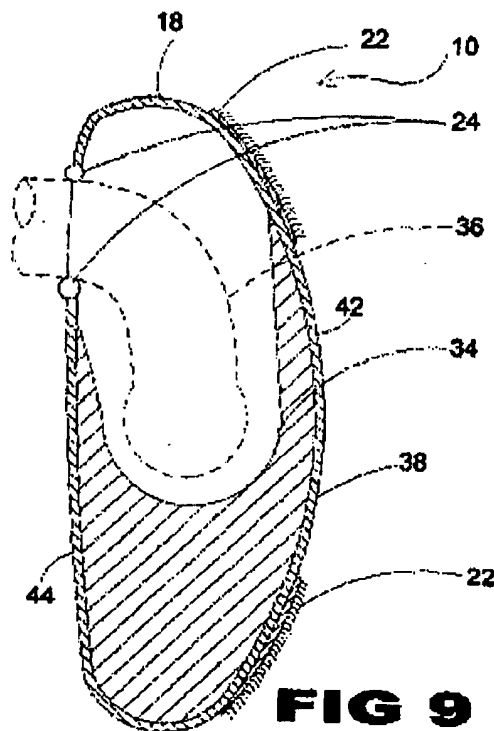
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least one posterior leg strap to connect an elasticized support waistband of absorbent composite 60 to the composite taught by Mortell in place to ensure proper function and prevent slippage as taught by Scovel.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

As described above, Mortell does not disclose at least one posterior strap connecting the elastic support waistband to the support structure. However, Scovel fails to correct the deficiencies of the rejected independent claim 1 as amended. That is, Scovel does not teach or suggest an article including an absorbent composite having a pad configuration and having at least one posterior support strap connecting the elasticized support waistband to the absorbent pad. In stark contrast, Scovel teaches a urinary bag instead of a pad, in which a wearer of the urinary bag must insert his penis through an elastic ring. See Fig. 9, reproduced below:



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Further, paragraph 0053 of the specification states "the penis 36 is inserted through the elastic ring 24 with the disposable urinary bag 18 providing enough room inside to *avoid contact between the penis and the absorbent material.*" (Italics added.) Because a wearer's penis is not intended to contact the absorbent material in the Scovel device, it would be necessary to make many modifications, not taught in the prior art, in order to combine the references as suggested by the Examiner.

Moreover, the present invention offers an advantage of having a discreet garment. The Scovel device, even if placed in a garment shell is large enough to at least in part avoid contact with the wearer's penis, and may appear as an atypical bulge that could draw unintended attention to the wearer's crotch area. A wearer of an incontinence garment is not likely to appreciate such attention.

Therefore, for at least these reasons, Applicant submits that independent claims 1 is patentable over Mortell in view of Scovel, and respectfully request that the rejection under 35 U.S.C. §103(a) be withdrawn. Like claim 1, claim 31 has been amended to require an absorbent pad. Applicant submits that the rejected claims which depend on claims 1 and 31 are allowable for the above reasons.

In conclusion, and in view of the remarks and amendments, reconsideration and withdrawal of the rejections of Claims 1, 2, 4, 13-18, 31-32, 36-37, and 42 under 35 U.S.C. §§ 102 and 103 are respectfully requested. Moreover, it is respectfully submitted that all of the presently presented claims are in condition for allowance and such action is earnestly solicited. If the Examiner has any questions or if there are any remaining issues that can be handled by telephone, the Examiner is invited to contact the undersigned at (920) 721-4043.

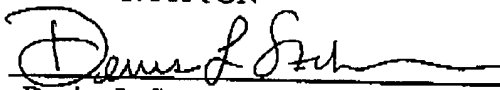
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Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

Respectfully submitted,

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